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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/798,601

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Edward I. Wulfman

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

10/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,601	<b>Applicant(s)</b> WULFMAN, EDWARD I.	
	<b>Examiner</b> MICHAEL G. MENDOZA	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19-21 and 26-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-21 and 26-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/24/2009</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-17 and 19-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 19-21 and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Ressemann et al. 5501694.

3. Ressemann teaches an intracorporeal medical device comprising: an operating head, and a catheter comprising; an overlying layer and a support layer defining an internal lumen; the support layer comprises a contiguous coil element, a braid element or a weave element including a plurality of loops, the support layer attached to the overlying layer at a bonding point and not attached to the overlying layer along a free portion, whereby the support layer is slippable relative to the overlying layer along the free portion when the tubular structure is bent; a drive shaft; and a control system; wherein the operating head comprises a cutter; wherein the catheter comprises a proximal section having the least flexibility, a mid section and a distal section having the most flexibility and the distal section comprises the medical tubular device.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ressemann et al.

6. Ressemann et al. teaches a device that is flexible yet highly resistant to kinking. Ressemann et al. fails to teach about what radius the device can go without kinking. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the flexibility of the device to a desired range before kinking, since it has been held that where the general condition of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

7. Claims 5-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ressemann et al. in view of Samson et al. 6143013.

8. Ressemann et al. teaches an overlying layer and a thermally shrinkable sheath (col. 12, lines 1-10) forming a lumen extending through at least a portion of the tubular structure; a support layer comprising a contiguous coil element, a braid element or a weave element including a plurality of loops, the support layer being attached to the sheath at a bonding point and further having a free portion wherein the free portion of the support layer is slippable relative to the sheath; and wherein the sheath encases

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and contacts the support layer and the support layer and the sheath are slippable relative to one another along the free portion. It should be noted that Ressemann et al. fails to teach wherein the thermally shrinkable sheath has a plurality of etches on at least its interior surface.

9. Samson et al. teaches a thermally shrinkable sheath having a plurality of etches for bonding to an adjacent layer (col. 15, lines 34-37). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Ressemann et al. in view of Samson et al. to create a better bond at the bonding point.

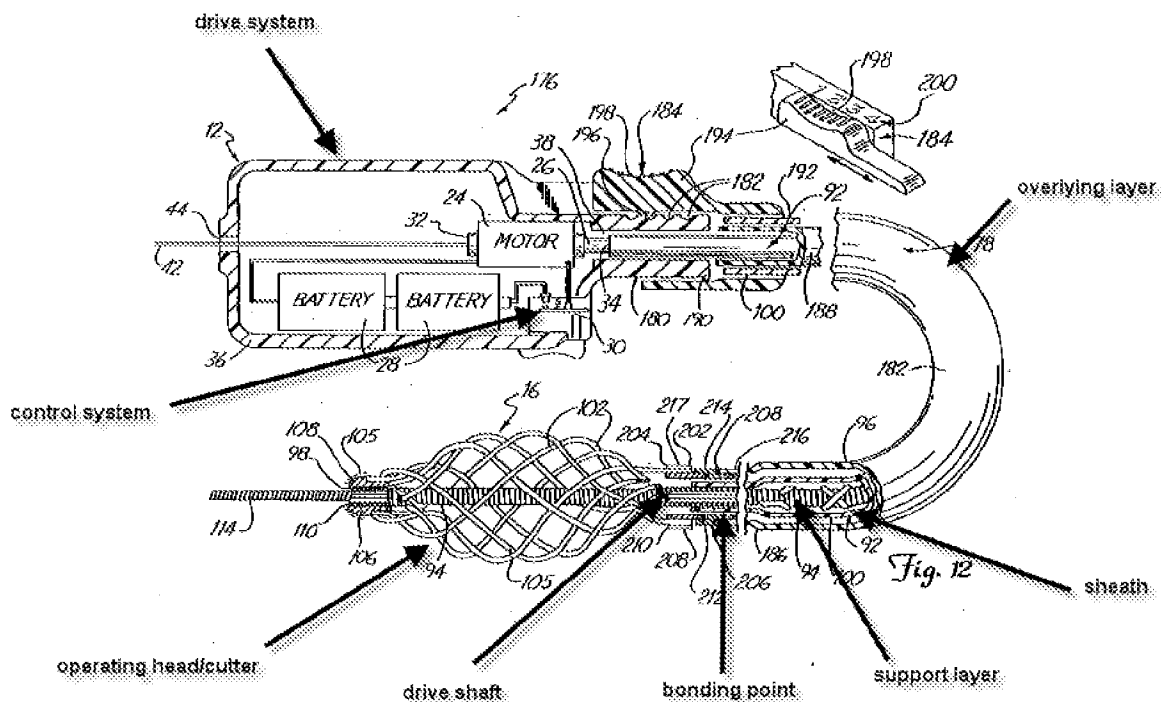
10. Ressemann/Samson teaches wherein the sheath comprises a polytetrafluoroethylene material, wherein the sheath comprises PTFE, Teflon, FEP and/or PFA (col. 11, lines 25-34, Samson); wherein the support layer includes the contiguous coil element comprised of a wire and a plurality of gaps between each loop.

11. As to claims 9 and 15, Ressemann/Samson teaches a device that is flexible yet highly resistant to kinking. Ressemann/Samson fails to teach the length of each gap being 10-200 percent of the width of the wire. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed gap range limitation, since it has been held that where the general condition of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233

12. As to claims 10 and 17, Ressemann/Samson teaches a device that is flexible yet highly resistant to kinking. Ressemann/Samson fails to teach about what radius the

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device can go without kinking. It would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust the flexibility of the device to a desired range before kinking, since it has been held that where the general condition of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.



### Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. G. M./  
Examiner, Art Unit 3734

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3734